

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Joseph Pagan, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

C.I. Lobster Corp. et al.,

Defendants.

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1:20-cv-07349 (ALC) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Plaintiff's Letter Motion to adjourn the conference scheduled for April 15, 2022 (ECF No. 124) is GRANTED IN PART and DENIED IN PART. The conference is adjourned until April 26, 2022 at 3:00 p.m. in Courtroom 11C.

Contrary to Plaintiff's assertions, the Court finds that Defendants' accusations of witness tampering regarding D'Agostino are relevant to Plaintiff's motion for conditional certification because Plaintiff must show that he "and potential opt-in plaintiffs together were victims of a common policy or plan that violated the law." *Amador v. Morgan Stanley & Co. LLC*, No. 11-CV-04326 (RJS), 2013 WL 494020, at *2 (S.D.N.Y. Feb. 7, 2013). However, the Court does not intend to address at the conference the merits of Defendants' possible faithless servant defense, which the Court agrees is best addressed at a later stage; for example, if Plaintiff opts to seek class certification under Rule 23. See *Cinar v. R&G Brenner Income Tax LLC*, No. 20-CV-01362 (RPK) (JRC), 2021 WL 7366924, at *8 (E.D.N.Y. Sept. 29, 2021) (declining to consider faithless servant argument because "the question of whether plaintiff is an appropriate class representative is a factual question not properly before [the court] at the conditional certification stage").

Accordingly, Plaintiff shall submit an affidavit, as set forth in the Court's March 31, 2022 Order (ECF No. 114), except that such affidavit shall be limited to the allegations regarding witness tampering. Plaintiff shall file such affidavit no later than April 19, 2022.

During the April 26, 2022 conference, the Court also intends to address the status of settlement negotiations.

SO ORDERED.

Dated: New York, New York
 April 11, 2022

Stewart D. Aaron

STEWART D. AARON
United States Magistrate Judge